IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

WP(C).No. 15873 of 2007(M)

PETITIONER:

T.P.GOPALAKRISHNAN, S/O.CHAMY,
AGED 47 YEARS, PILAKKAL HOUSE,
KAVALAPPARA, SHORNUR, PALAKKAD DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS:

1. THE CHIEF CONSERVATOR OF FORESTS,
   TRIVANDRUM.

2. THE DIVISIONAL FOREST OFFICER,
   PALAKKAD - 9.

BY G.P.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/07/2007, THE COURT ON 19.7.2007 DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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W.P.(C).No.15873 of 2007

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Dated this the 19th day of July, 2007

J U D G M E N T

The petitioner bid for 8 lots of timber in an auction conducted by the respondents on 6.9.1994 for a total amount of Rs.6,90,925/-. He paid Rs.2,000/- as earnest money deposit and Rs.20,000/- as security deposit. As per the tender conditions the petitioner was liable to pay the balance amount within 60 days of acceptance of the bid. However, the petitioner did not pay the balance amount, although time for payment was extended by 2 weeks. Consequently the timber was re-auctioned on 24.8.1995 for a total amount of Rs.4,50,986/-. The respondents have demanded the difference between the petitioner's bid amount and the bid amount in the subsequent auction as damages for breach of contract committed by the petitioner with interest, penal interest etc. By Ext.P5 an amount of Rs.4,44,283/- has been demanded in respect of the same. The petitioner challenges Ext.P5. According to the petitioner, it is settled law that a party to a contract cannot unilaterally decide whether there is breach of contract and determine the damages payable. He would submit

that such questions have to be decided by an independent authority. He would further contend that in any event, the demand for huge interest is patently unjustifiable. He relies on a decision of the Supreme Court viz., that of *K.P.Chawdhry v. State of M.P and ors*. reported in AIR 1967 SC 203, in support of his contention that since there is no contract between the petitioner and the Government which can be stated to be broken by the petitioner, no damages can be recovered from the petitioner. He further contends that the petitioner should not denied relief under Article 226 of the Constitution of India, since if he is relegated to the remedy by way of suit, he may have to give notice to the respondents under Section 80 of the C.P.C. before he could get any relief and if he was to do so, before he could get any relief, the impugned order would well be enforced by them. In support of this contention he relies on the decision of *Firm Gobardhan Das Kailasnath v. Collector of Mirzapur*, reported in AIR 1956 All. 721.

2. The 2nd respondent has filed a statement justifying Ext.P5.

3. I have considered the rival contentions in detail.

4. There is no doubt regarding the legal proposition that a party to a contract cannot unilaterally decide the question as to whether there is breach of contract and assess the quantum of damages payable. However, I am of opinion that nothing prevents the petitioner from agreeing to a decision by the respondents in this regard and, if agrees to such a decision, he cannot later on turn around and say that respondents have no jurisdiction to decide the question. In this case, originally the DFO, Palakkad issued Ext.P1 notice demanding an amount of Rs.4,44,203/- as damages caused on account of breach of contract committed by the petitioner. The petitioner filed Ext.P2 reply to the same. In Ext.P2 there is absolutely no contention regarding the want of jurisdiction on the part of DFO to decide the question. In fact the petitioner earlier approached this court by filing O.P.No.16120/96. At that time also it was well within his right to contend that the respondents could not have unilaterally taken a decision in the matter. The petitioner has no contention that he had raised such a contention in that original petition. This court disposed of that original petition with the

following directions:

> "Since Ext.P6 objection is pending consideration before the third respondent, I am inclined to dispose of this writ petition with a direction to the third respondent to consider Ext.P6 and pass appropriate orders in accordance with law within notice to the petitioner and after affording an opportunity of being heard to the petitioner within a period of three months from the date of receipt of a copy of this judgment. Till Ext.P6 is disposed of, Exts.P8 and P9 will be kept in abeyance."

However, although a notice was issued to the petitioner for hearing on 6.1.1997, he did not hear anything pursuant thereto. Without passing orders the respondents again initiated proceedings for recovery of the amounts by sale of his properties. Challenging such a move, the petitioner again filed O.P.No.10341/1997. In that original petition, by Ext.P3 judgment, this court again directed the Divisional Forest Officer (DFO) to carry out the directions contained in judgment in O.P.No.16120/96 and to proceed in accordance with the order to be passed. In that writ petition also the petitioner does not seem to have raised a contention regarding want of jurisdiction. On the contrary, the petitioner challenged the recovery proceedings without passing orders as directed in the earlier judgment. It is pursuant to the said direction that Ext.P5 order has been passed by the DFO. Therefore, it is evident that by repeatedly seeking

direction to the DFO to take a decision as to the liability of the petitioner for damages, the petitioner should be taken to have submitted to the jurisdiction of the DFO in the matter. Therefore, he cannot now contend that the DFO is not competent to pass Ext.P5 order, since it is pursuant to the direction of this court in an original petition filed by the petitioner himself for that purpose, that Ext.P5 order has been passed. He cannot therefore now turn around and contest the jurisdiction of the DFO to pass Ext.P5 order.

5. I do not think that the decision in *K.P.Chowdhry's case* (supra) has any application to the case at hand. That was a case where there was no concluded contract between the appellant in that case and the Government, since there was no acceptance of his bid. But here in this case, the petitioner's bid was accepted and there was a concluded contract. As such, I do not find any merit in the contention of the petitioner on the basis of the said decision.

6. The petitioner also contends that the demand for interest and other charges in Ext.P5 is usurious and

unconscionable and therefore, the same should be set aside. The correctness or otherwise of the computation of the amount due in Ext.P5 depends on the various factual factors the correctness of which the petitioner has to challenge by adducing evidence which can be done in a suit where he and the opposite party can adduce evidence in support of their respective case. The reliance of the petitioner on Allahabad High Court decision (Supra) is misplaced. That decision does not categorically hold that in every such case the jurisdiction under Article 226 has to be exercised and the contingency which prompted the said court to exercise the jurisdiction under Article 226 is completely absent in this case. That being so, I do not find any merit in the reliance on that decision by the petitioner. In the above circumstances, I do not find any merit in the writ petition and accordingly, the same is dismissed without prejudice to the right of the petitioner to contest the correctness of Ext.P5 in a suit filed for that purpose.

sdk+ S.SIRI JAGAN, JUDGE